

**COMMITTEE ON SUPERIOR COURT
MINUTES**

Friday, February 27, 2009
Arizona State Courts Building
Conference Room 345 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable James A. Soto	Honorable Michael Jeanes
Honorable Eddward Ballinger	Ms. Deborah Schaefer, proxy for the Honorable David Mackey
Honorable James E. Chavez	Honorable Margaret Maxwell
Honorable Norman Davis	Honorable Stephen McCarville
Honorable Robert Duber II	Honorable Colleen McNally
Honorable George Foster - telephonic	Ms. JoJene Mills - telephonic
Honorable Sue Hall - telephonic	Mr. Marcus Reinkensmeyer
Mr. Joshua Halversen - telephonic	Honorable Stephen Villarreal - telephonic
Honorable Danna Hendrix	Ms. Susan Wilson
Honorable Bethany Hicks	
Honorable Cathy Holt	

MEMBERS ABSENT:

Honorable Patricia Escher	Mr. Tim Hardy
Honorable Richard S. Fields	Honorable Charles Harrington
Honorable Andrew Gould	Honorable Kenneth Lee

PRESENTERS/GUESTS:

Ms. Karen Pulley, Department of Corrections	Ms. Patience Huntwork, AOC
Mr. Joe Cesko, Department of Public Safety	Ms. J.L. Doyle, AOC
Mr. Dan Levey, COVIC	Mr. Clifford Ford, AOC
Mr. Mike DiMarco, AOC	Ms. Kathy Waters, AOC
Mr. Jerry Landau, AOC	Mr. Patrick Scott, AOC
Mr. Jim Price, AOC	
Mr. Karl Heckart, AOC	

STAFF:

Ms. Kay Radwanski	Ms. Tama Reily
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I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the February 27, 2009, meeting of the Committee on Superior Court (COSC) was called to order by the Hon. James A. Soto, chair, at 10:04 a.m.

Judge Soto welcomed new members Joshua Halversen, Judge Danna Hendrix, and Susan Wilson. He also introduced Deborah M. Schaefer, who served as proxy for Judge David Mackey.

B. Approval of Minutes

The minutes of the September 26, 2008, and November 7, 2008, COSC meetings were presented for approval.

MOTION: To approve the minutes of the September 26, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-01

MOTION: To approve the minutes of the November 7, 2008, COSC meeting as presented. Motion seconded. Approved unanimously. COSC-09-02

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. GAP Program – Fingerprints and Criminal Histories

Karen Pulley, Arizona Department of Corrections (ADC), and Joe Cesko, Department of Public Safety (DPS), provided an overview of the GAP program, a cooperative program between ADC and DPS that serves to ensure that all criminals are fingerprinted and assigned an Arizona State Identification Number (SID). They discussed the role the courts play in the continued success of the program. Ms. Pulley explained that DPS uses a defendant's fingerprints to establish a criminal history and assign a SID number to the person. If a person is not fingerprinted at the time of arrest (for example, cited and released or indicted by a grand jury), a gap in establishment of the criminal history develops. The Arizona Attorney General's Office has approved a DPS procedure to close the gap by comparing fingerprints taken by ADC when the defendant enters the prison system with a fingerprint placed on the court order at time of sentencing (pursuant to ARS 13-607). If the defendant's fingerprint on the court order is illegible or absent, DPS has no other print to compare with ADC's fingerprint card; therefore, the history will not exist in the FBI's criminal database. At present, 134 inmates lack criminal histories and SID numbers.

During discussion, Ms. Pulley was asked whether ADC can refuse to accept an inmate who arrives at Corrections with no SID. She said ADC has reviewed that option and considers it a possibility. It was suggested that inmates be brought back to court for fingerprinting, but Ms. Pulley said there is no guarantee that the inmate appearing in court is the same person who stood in front of the judge at the time of sentencing. As to the court orders, Mr. Cesko explained that a photocopy of the print on the sentencing order, if captured at 500 dpi (dots per inch), is sufficient quality for DPS purposes. Mr. Jeanes noted that the courts generally

scan documents at 200 dpi. Regarding a legislative solution, Patrick Scott, Administrative Office of the Courts (AOC), told members that HB2449, if passed into law, would require law enforcement to take the right index fingerprint of a person arrested on a cite-and-release offense before releasing the person.

B. Report and Rule Petition of the Advisory Committee on Supreme Court Rule 123 and Data Dissemination

Honorable Michael Jeanes, Clerk of the Maricopa County Superior Court, and Chair of the Rule 123 & Data Dissemination Committee, provided an overview of the committee and its examination of Rule 123, which concerns access to judicial records. The committee filed its recommendations in January 2009. It will reconvene in April 2009 to review and address comments received on the rule petition and possibly file an amended petition if indicated. He added that the committee is seeking feedback on the proposed changes and requested members provide their formal comments on the Court Rules Forum by April 1, 2009.

C. Protective Orders and Public Access

Kay Radwanski, AOC Court Services Division, addressed the committee on the issue of remote access to protection order case information on the Arizona Judicial Branch webpage. To comply with the Violence Against Women Act (VAWA), plaintiff information is not published on the site; however, the Committee on the Impact of Domestic Violence and the Courts (CIDVC) recently discussed whether defendant information and case history also should be removed. CIDVC proposed three alternatives: 1) remove all protection order case information from the web page; 2) limit access to only those cases for which there was a contested hearing and at which the order was affirmed or modified; or 3) leave the information (defendant information and case history) on the web page as currently published. Ms. Radwanski requested that COSC members recommend one of the three alternatives. CIDVC will consider the issue again at its next meeting after reviewing the recommendations of COSC and the Committee on Limited Jurisdiction Courts (LJC).

During discussion, Ms. Radwanski explained that public access, which allows any person to review the case file at a courthouse, would not be affected. The VAWA provision limits only on-line (remote electronic) access. She noted that LJC members discussed this issue and recommended removing protection order case information in its entirety. LJC members felt that landlords and employers use the Judicial Branch website as a quick background check method but do not read or understand the case history, missing crucial information, such as in cases where orders are quashed without a hearing. However, the case look-up can be a legitimate tool for landlords and employers who may need to verify that a protective order is actually in effect. Ms. Radwanski noted that one way to ensure that the case disposition is clear is to place it more prominently on the web page, on the first screen that a viewer would see, so the viewer would not have to scroll through the information.

MOTION: To maintain the status quo with the defendant information and case history currently published on the web page. Motion seconded. Vote: 8-10-0. Motion failed. COSC-09-03

MOTION: To provide limited access by publishing defendant information and case history only in cases in which the order has been affirmed or modified after a contested hearing. Motion seconded. Vote: 12-4-2. Motion passed. COSC-09-04

D. R-09-0001 – Petition to Amend Rule 31.6, Rules of Criminal Procedure, and Rule 103, Rules of Procedure in Juvenile Court

Dan Levey, a member of the Commission on Victims in the Courts (COVIC), briefed committee members on COVIC's pending rule petition, R-09-0001, which seeks to bring consistency to the requirements on disbursement of restitution payments collected by the court during pending appeals. At present, there is a discrepancy in how adult and juvenile courts address this issue. The goal is to attain a statewide standard and ultimately ensure that victims receive consistent judicial rulings from case to case. Mr. Levey invited COSC members to file comments to the petition on the Court Rules Forum webpage at <http://www.dnnsupremecourt.state.az.us/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/CourtRulesForum/tabid/91/forumid/3/postid/742/view/topic/Default.aspx>. Comment deadline is May 20, 2009.

E. ACJA 5-205 Collections

Mike DiMarco, manager of the Consolidated Collections Unit, AOC Court Services Division, presented a new code section and requested a favorable recommendation from COSC. ACJA § 5-205, concerning collections, codifies Administrative Orders 97-57, 2003-126, and 2005-029, all of which deal with the Fines, Fees and Restitution Enforcement (FARE) program. Mr. DiMarco explained that the proposed code section contains no significant changes in the new section; it simply brings the program, as it exists currently, into compliance with the establishing administrative order.

MOTION: To approve ACJA 5-205 Collections with discretion given to the FARE Advisory Committee to continue to address language in this section regarding civil filing fee deferrals. Seconded. Passed unanimously. COSC-09-05

F. Legislative Report

Jerry Landau, AOC Director of Government Affairs, gave an update on proposed legislation that would impact superior courts.

HB2024: LAW ENFORCEMENT; DUTY FITNESS EXAMINATION

Mr. Landau said he expected this bill to be amended in the Military Affairs Committee. It requires the employer of a law enforcement or probation officer to provide the results of a fitness for duty examination to the officer within three days of the employer receiving the results. The amended version will require medical reports to be exchanged with the employee after a second evaluation by an independent doctor.

HB2236: COUNTY OFFICES; BUSINESS PERIODS

Mr. Landau reported that legal research shows the bill does not apply to the court. The bill covers Title 11 officers while courts are located in Titles 9, 11 and 12.

SB1087: AGGRAVATED DOMESTIC VIOLENCE; VIOLATION

This bill would dramatically increase the workload of the superior court as well as probation. Mr. Landau said it is unclear whether this bill will progress.

SB1106: DOMESTIC VIOLENCE; CHILD CUSTODY

Mr. Landau said he expected the requirement of written findings of fact to be removed from this bill, along with some other changes. The bill would require the court to make written findings of fact, in addition to considering all of the relevant factors, to determine if a parent, who is seeking custody of a child, has committed an act of domestic violence. Current law (ARS 25-403.03) establishes a rebuttable presumption that awarding custody to a parent who has committed domestic violence is not in a child's best interests. The standard of proof to rebut the presumption is by a preponderance of the evidence, but the proposed bill would raise the standard of proof to clear and convincing evidence.

HB2449: MANDATORY FINGERPRINTING; CENTRAL STATE REPOSITORY

This bill would require persons arrested for specified offenses to be fingerprinted prior to being released and requires the arresting authority to forward a report to all courts involved, indicating that the person was fingerprinted. The Arizona Criminal Justice Commission (ACJC) currently is trying to deal with a 40- to 60-percent compliance rate with fingerprinting and forwarding of the reports throughout the state. ACJC is proposing a requirement that an index fingerprint be placed on every citation. Discussions will continue regarding relieving the Clerks of Court from having to handle final disposition reports and shifting the responsibility back to prosecutors.

HB2058: COMMISSIONERS; QUALIFICATIONS

Requires a superior court commissioner to be a licensed member of the State Bar of Arizona for at least five years, mirroring the qualifications for a superior court judge. Current law requires a commissioner to have engaged in the practice of law for at least three years preceding appointment.

G. Criminal Rules Video-Conferencing Advisory Committee

Patience Huntwork, staff attorney to the Supreme Court, discussed establishment of the Criminal Rules Video-Conference Advisory Committee (CRVAC). The committee will review issues raised by rule petition R-06-0016, which concerns the appearance of defendants via video-conferencing in criminal proceedings. The committee will provide its recommendations to the Arizona Judicial Council (AJC) in June 2009.

H. Rule Changes Update

Patience Huntwork, staff attorney to the Supreme Court, provided an update on existing and pending rule change petitions that will impact superior courts. An on-line list of the rules and related information can be found at <http://www.supreme.state.az.us/rules/>.

I. E-Filing Update

Jim Price, AOC Information Technology Division, outlined the statewide e-filing initiative. He explained that the AOC has contracted with a vendor, Intresys, to provide a product that will serve all courts and all case types. The AOC will maintain the infrastructure of the e-filing system. The Maricopa County superior and justice courts, the initial pilot courts, are

expected to begin implementation in Summer 2009. Appeals courts are expected to begin using e-filing in the fall, followed by all other courts. The long-term goal is to have e-filing occur electronically from the user all the way through to the court and its case management system. Currently, Intresys provides services to a few large jurisdictions, including California, New York, and Florida, with its TurboCourt e-filing application. Mr. Price gave members a brief online demonstration of the steps to filing a case on the TurboCourt website (<http://www.turbocourt.com/>) and suggested they peruse the sight to get an idea of the features and ease of use an e-filing application provides.

J. ACJA 6-106 Personnel Practices

JL Doyle, AOC Adult Probation Services Division, presented proposed changes to ACJA § 6-106 that would eliminate the requirement for mandatory testing when an employee is involved in an accident in a state vehicle, if the officer on scene does not have reasonable suspicion that the driver is under the influence of alcohol or other substance. The change does not preclude any chief or director from requiring drug testing based on his or her own reasonable suspicion.

MOTION: To approve ACJA § 6-106: Personnel Practices as presented. Seconded.
Vote: 17-1-0. Motion passed. COSC-09-06

ACJA 6-202.01 Evidence-Based Practice – Intensive Probation Supervision

This code section has been withdrawn and will not be submitted to AJC at this time.

ACJA 6-204 Interstate Compact Probation

Ms. Doyle also presented proposed changes to ACJA § 6-204, which are necessary because of rule amendments that became effective January 2008. The changes are non-substantive, adding two new definitions in the definitions section and minor changes in the language.

MOTION: To approve ACJA § 6-204: Interstate Compact Probation as presented.
Seconded. Motion passed unanimously. COSC-09-07

ACJA 6-204.01 Evidence-Based Practices – Interstate Compact Probation

Ms. Doyle briefed the committee on proposed changes to code section 6-204.01. The changes are necessary because of the roll-out of the evidence-based practices for probation. The code change would bring together the interstate compact code and the standard probation code, so that incoming interstate compact offenders on probation in Arizona would be supervised under the evidence-based requirements.

MOTION: To approve ACJA § 6-204.01: Evidence-Based Practices Interstate Compact Probation as presented. Seconded. Vote: 17-0-1. Motion passed. COSC-09-08

ACJA 6-205 Drug Treatment and Education

Clifford Ford, AOC Adult Probation Services Division, presented proposed revisions to ACJA § 6-205 to bring the code in line with evidence-based principles regarding assessments and evaluations for substance abuse treatment.

During discussion, Mr. Ford was asked about changes at page 7, paragraph 4, that appear to limit the number of service providers. Concern was expressed that the proposed amendment would narrow the number of eligible treatment providers, particularly in rural counties where there are fewer professionals. Also, members asked whether the code change would restrict the flexibility of probation department administrators to choose, based upon the particular constraints, appropriate care providers. Ms. Waters explained that the code change creates no more requirements for care providers than already required. She noted that Behavioral Health standards govern treatment programs. She said that larger probation departments, as in Maricopa, Pima, and Yuma, have internal treatment providers who meet many of the licensing requirements. If they do not meet the licensing requirements, the probation departments use contracted Regional Behavioral Health services, where state requirements dictate required standards. Ultimately, the code change would create consistency with Behavioral Health requirements. Ms. Waters noted that the Committee on Probation had no concerns about this particular provision.

MOTION: To approve ACJA § 605: Drug Treatment and Education Fund as presented.
Seconded. Vote: 7-6-3. Motion passed. COSC-09-09

K. Parenting Plans Workgroup

Judge Colleen McNally, co-chair of the Parenting Plans Workgroup, updated the committee on the workgroup's progress and presented its third draft. The draft will be published on the Arizona Judicial Branch website where a page is currently being developed and set up to receive comments. If members would like to offer feedback on the current draft prior to that time, they can send their comments to Kay at KRadwanski@courts.az.gov. The link for the new webpage will be sent to members once it is available.

III. OTHER BUSINESS

Judge Soto announced that Judge Chavez will retire in March and thanked him for his service to COSC. Judge Chavez' departure creates a rural county judicial vacancy on the committee.

A. Next Meeting:

Friday, May 15, 2009, 10:00 a.m. – 3:00 p.m.
Arizona State Courts Building, Conference Room 345
1501 W. Washington, Phoenix, Arizona

B. Good of the Order/Call to the Public

No comments offered.

The meeting was adjourned at 2:43 p.m.